IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/08/2003

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice M.CHOCKALINGAM

Criminal Appeal No.276 of 1995

1. Marameri Ponniah

2. Murugan ..... Appellants

-Vs-

State by Inspector of Police,
Chinnamanur Police Station,
Crime No.14 of 1993. ..... Respondent

Prayer: Appeal against the judgment dated 10.1.1995 in Sessions Case No.110 of 1994 delivered by the Principal Sessions Judge, Madurai.

!For Appellant : Mr.P.Venkatasubramanian
For M/s.K.S.Ramachandran
and S.N.Thangaraj

^For Respondent : Mr.V.M.R.Rajendran
Addl. Public Prosecutor

:J U D G M E N T

(Judgment of the court was delivered by M.CHOCKALINGAM, J.)

The appellants, both of whom were charged under Section 302 r/w Section 34 IPC and found guilty according to the charges and awarded life imprisonment, have brought forward this appeal.

2. The short facts necessary to dispose of this appeal are as follows:-

a) P.W.2 was living in Seelaiyampatti. At 10.30 p.m. on 18.3.1993, when P.W.2 was sleeping in the firewood shop belonging to his nephew, he heard the noise, "Please save me". On hearing this, he woke up and found A1 and A2 stabbing the deceased Kulandaivelpillai indiscriminately. At that time, one Mayil also witnessed the occurrence and he shouted "Do not attack him". A1 and A2 left the place of occurrence immediately. The deceased, after

sustaining injuries, fell down dead. P.W.1, on hearing the incident from the said Mayil, went to the house of the deceased at 10.45 p.m. and informed the wife of the deceased, P.W.4, of the incident. P.Ws.1 and 4 rushed to the site of occurrence and found the husband of P.W.4 lying dead with severe injuries. P.W.1 immediately proceeded to Chinnamanur Police Station, where P.W.13, Sub-Inspector of Police, was on duty. P.W.1 gave Ex.P-1, report, at 11.45 p.m, on the basis of which, P.W.13 registered a case in Crime No.195 of 1995 under Section 302 IPC against the appellants. Printed first information report, Ex.P-12, was sent to the concerned Judicial Magistrate Court. On receipt of a copy of the first information report, P.W.14, Inspector of Police, took up investigation in the crime.

b) P.W.14 proceeded to the site of occurrence, made an inspection and prepared Ex.P-1, mahazar, in the presence of Ex.P-6 and other witnesses. Ex.P-13, rough sketch, was also prepared. The site of occurrence along with the dead body was caused to be photographed. The investigating officer, P.W.14, conducted inquest between 6.00 a.m. and 9.00 a.m. on 19.3.1993 over the dead body of Kulandaivelpillai and prepared Ex.P-14, inquest report. At the time of inquest, he examined P.Ws.1, 2, 4 and other witnesses and panchayatdars and recorded their statements. On completion of inquest, he sent the dead body through a police constable along with a requisition to the hospital for conducting autopsy.

c) On receipt of the requisition for conducting autopsy, P.W.9, the medical officer attached to Uthamapalayam Government Hospital, conducted autopsy on the dead body on 19.3.1993 and found the following external injuries and corresponding internal injuries as narrated in the post-mortem certificate marked as Ex.P-6 in the case:-

1.A stab wound with clear edges seen on the left cheek, size □ 3 cm x = cm x 1 cm.
2.A stab wound 3 x 1 x 1 cm on the left side of neck below left mandible.
3.A stab wound 3 x 1 x = cm on the left shoulder.
4.A stab wound 3 x 1 x 4 cm below the left collar bone on the left upper chest.
5.A stab wound 3 x 1 x 8 cm on the left chest 1" away from midline.
6.A stab wound 3 x 1 x 8 cm on the right side of chest 1 cm away from the midline.
7.A stab wound 3 x 1 x 6 cm on the right lower chest 1" away middle of lower chest at the level of xiphisternum.
8.A stab wound 1 x = x 6 cm on the right lower chest.
9.A stab wound 1 x = x = cm on the left upper abdomen.
10.A stab wound 3 x 1 x 6 cm on the left, middle of abdomen.
11.A stab wound 2 x = x 2 cm on the right side of chest below right collar bone.
12.A stab wound 3 x 1 x 1 cm on the left, forearm □ anterior above left wrist.
13.A stab wound 1 x = x = cm on the back of left wrist.
14.A stab wound 1 x = cm below the left kne3.
15.An abrasion 2 x 1 cm on the right knee.
16.A stab wound 1 x = x 1 cm right lower chest □ posterior.
17.A stab wound 3 x 1 x 6 cm on the left infra-scapular region 1" away from

the midline.
Internal Examination:
Hyoid bone intact. Thorax: Right 6th rib broken corresponding to injury No.6. Left 6th rib broken corresponding to injury No.5. Right 3 rd rib broken corresponding to injury No.11. Left neck muscles severed. 2nd rib broken corresponding to injury No.4. Right upper side pericardium is cut corresponding to injury No.6.

The post-mortem doctor has given his opinion that the said injuries found on the dead body would be sufficient to cause death in the ordinary course of nature.

d) At about 4.30 p.m. on 25.3.1993, the investigating officer arrested A2 and he recorded the confessional statement made by him voluntarily. Pursuant to the confession, M.O.1, knife, was produced by A2 and the same was also seized under Ex.P-4, mahazar, in the presence of witnesses. A2 was sent to judicial remand. On 30.3.1993, A1 surrendered before Judicial Magistrate No.3, Madurai. All the material objects recovered at the time of investigation were sent to court with a requisition to send them for chemical analysis. Accordingly, all the material objects were subjected to chemical test and Ex.P-10, chemical analysis report, and Ex.P-11, serology report, were obtained by the court. On completion of the investigation, the investigating officer laid the final report under Section 302 r/w Section 34 IPC against both the appellants.

3. In order to prove the charge levelled against the appellants/ accused, the prosecution examined 11 witnesses and marked 14 exhibits and 13 material objects. On completion of the evidence on the side of the prosecution, the appellants were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution side . No defence witnesses were examined. The court examined M.Alaguvelsamy as a court witness. On consideration of the rival submissions and on scrutiny of the materials, the trial court found both the appellants guilty of the charge framed under Section 302 r/w Section 34 IPC and sentenced each of them to life imprisonment. Hence, this appeal.

4. Arguing for the appellants, the learned counsel, inter alia, would make the following submissions for the consideration of this court. P.W.1, who gave the complaint, was not an eye-witness. Even as per the prosecution case, there is lot of discrepancy between the evidence of P.W.2 and that of P.W.3, who are, according to the prosecution, the eye-witnesses and one of the witnesses, who was not examined by the prosecution, was examined by the court. The medical evidence is not corroborated by the ocular testimony and this is a case where the prosecution has not brought home the guilt of the accused beyond all reasonable doubt and hence, the judgment of the lower court has got to be set aside and the appellants have to be acquitted.

5. Opposing strongly, the learned Additional Public Prosecutor would submit that only on the appreciation of the evidence of the prosecution, the lower court has found the appellants guilty and therefore, the judgment of the trial court has got to be sustained. This court paid its full attention to

the rival submissions and made a careful appraisement of the evidence and the materials available on record and is unable to notice any substance in this appeal.

6. The deceased Kulandaivelpillai, according to the prosecution, met his death out of homicidal violence. This fact was nowhere disputed by the appellants. Apart from that, in order to prove the same, the prosecution has relied on the evidence of the post-mortem doctor, P.W.9, and on the post-mortem certificate, Ex.P-6, issued by him, wherein 17 injuries have been narrated. The doctor has clearly opined that all the injuries are sufficient to cause death in the ordinary course of nature. Hence, it could be safely concluded that Kulandaivelpillai died out of homicidal violence.

7. In order to bring home the guilt of the appellants or a nexus between the accused in the crime in question, the prosecution examined P.Ws.2 and 3. P.W.2 has clearly narrated in his evidence that at the time when he was lying in a firewood shop nearby, he heard the noise, "Please save me" and woke up and he found A1 and A2 stabbing the deceased indiscriminately and his evidence has also been clearly corroborated, in all particulars, by P.W.3. No circumstances were brought forth either to reject or disbelieve or cast any doubt on the evidence of these two witnesses. The contention of the appellants' side that P.W.1 was not an eye-witness and hence, no evidentiary value can be attached to his deposition, has to be discountenanced for the simple reason that the prosecution has relied on the evidence of P.W.1 only to the extent of the fact that it was he who set the law in motion and it was only on his complaint, the case was registered. In fact, the evidence adduced by P.Ws.2 and 3 inspires confidence of the court and it has to be necessarily held that it was the appellants, who attacked the deceased resulting in his instantaneous death. The ocular testimony, through the evidence of P.Ws.2 and 3, is corroborated by the medical evidence narrated above. One added circumstance is the recovery of the knife, M.O.1, from A2 pursuant to the confession made by him. The arrest and confession leading to the recovery of the weapon of offence, has been spoken to by P.W.4. Despite the lengthy cross-examination of the witnesses, the evidence remains unshaken and hence, in view of the direct evidence corroborated by the medical evidence and the circumstantial evidence, through the recovery of M.O.1, knife, at the instance of A2, at the time of investigation, the lower court has, on appreciation of the said evidence, taken the correct view that the appellants are the persons, who committed the crime in question and it is under the said circumstances, no contentions raised by the appellants' side merit any acceptance. Therefore, this court is not able to notice any merit in the appeal in favour of the appellants and the judgment of the lower court is confirmed

8. In the result, the appeal fails and is dismissed. It is reported that the appellants/accused are on bail and if so, the learned Sessions Judge shall take steps to commit them to jail to undergo the remaining period of sentence.

Index : Yes
Website: Yes
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To

1.The Principal Sessions Judge, Madurai.
2.The Judicial Magistrate, Uthamapalayam.
3.The Judicial Magistrate, Uthamapalayam, through the Chief Judicial Magistrate, Madurai.
4.The District Collector, Madurai District.
5.The Public Prosecutor, Chennai.
6.The Director General of Police, Chennai.
7.The Superintendent, Central Prison, Madurai.
8.The Inspector of Police, Chinnamanur Police Station.